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CLARK, U.S. DISTRICT
SOUTHERN DISTRICT OF CALIFORNIA

BY:

DEPUTY

Attorneys for Plaintiff
Dale R. Peterson

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

DALE R. PETERSON,

Case No.: '08 CV 1171 JLS-NLS

Plaintiff.

COMPLAINT FOR DAMAGES

V.

JURY TRIAL DEMANDED

LVNV FUNDING, LLC,

Defendant.

INTRODUCTION

1. The United States Congress has found abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors, and has determined that abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy. Congress wrote the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq (hereinafter "FDCPA"), to eliminate abusive debt collection practices by debt collectors, to insure that

COMPLAINT FOR DAMAGES

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ORIGINAL

1 those debt collectors who refrain from using abusive debt collection practices
2 are not competitively disadvantaged, and to promote consistent State action to
3 protect consumers against debt collection abuses.¹

4 2. The California legislature has determined that the banking and credit system
5 and grantors of credit to consumers are dependent upon the collection of just
6 and owing debts and that unfair or deceptive collection practices undermine
7 the public confidence that is essential to the continued functioning of the
8 banking and credit system and sound extensions of credit to consumers. The
9 Legislature has further determined that there is a need to ensure that debt
10 collectors exercise this responsibility with fairness, honesty and due regard for
11 the debtor's rights and that debt collectors must be prohibited from engaging
12 in unfair or deceptive acts or practices.²

13 3. Dale R. Peterson, ("Plaintiff"), by Plaintiff's attorneys, brings this action to
14 challenge the actions of LVNV FUNDING, LLC, ("Defendant"), with regard
15 to attempts by Defendant, a debt collector, to unlawfully and abusively collect
16 a debt allegedly owed by Plaintiff, and this conduct caused Plaintiff damages.

17 4. Unless otherwise indicated, these allegations are made on information and
18 belief. Further, the use of any defendant's name in this Complaint includes all
19 agents, employees, officers, members, directors, heirs, successors, assigns,
20 principals, trustees, sureties, subrogees, representatives and insurers of that
21 defendant named. All allegations are made on information and belief, except
22 those allegations that pertain to the named Plaintiff(s), or to their attorneys,
23 which are alleged on personal knowledge.

24 **JURISDICTION AND VENUE**

25 5. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331 and 15 U.S.C. §
26 1692k(d), and 28 U.S.C. § 1367 for supplemental state law claims.

27
28 ¹ 15 U.S.C. §§ 1692(a)-(e)

² Cal. Civ. Code §§ 1788.1 (a)-(b)

- 1 6. This action arises out of Defendant's violations of the following: the
- 2 Rosenthal Fair Debt Collection Practices Act, California Civil Code §§ 1788-
- 3 1788.32 (RFDCPA), the Fair Debt Collection Practices Act, 15 U.S.C. §§
- 4 1692 et seq.
- 5 7. Because Defendant does business within the State of California, personal
- 6 jurisdiction is established.
- 7 8. Venue is proper pursuant to 28 U.S.C. § 1391.

PARTIES

- 9 9. Plaintiff is a natural person who resides in the City of San Diego, County of
- 10 San Diego, State of California and is obligated or allegedly obligated to pay a
- 11 debt, and is a "consumer" as that term is defined by 15 U.S.C. § 1692a(3).
- 12 10. Plaintiff is a natural person from whom a debt collector sought to collect a
- 13 consumer debt which was due and owing or alleged to be due and owing from
- 14 Plaintiff, and is a "debtor" as that term is defined by California Civil Code §
- 15 1788.2(h).
- 16 11. Plaintiff is informed and believes, and thereon alleges, that Defendant is a
- 17 company doing business in California.
- 18 12. Plaintiff is informed and believes, and thereon alleges, that Defendant is a
- 19 person who uses an instrumentality of interstate commerce or the mails in a
- 20 business the principal purpose of which is the collection of debts, or who
- 21 regularly collects or attempts to collect, directly or indirectly, debts owed or
- 22 due or asserted to be owed or due another and is therefore a "debt collector" as
- 23 that term is defined by 15 U.S.C. § 1692a(6).
- 24 13. Plaintiff is informed and believes, and thereon alleges, that Defendant, in the
- 25 ordinary course of business, regularly, on behalf of himself or herself or
- 26 others, engages in debt collection as that term is defined by California Civil
- 27 Code § 1788.2(b), and is therefore a "debt collector" as that term is defined by
- 28 California Civil Code § 1788.2(c).

14. This case involves money, property or their equivalent, due or owing or alleged to be due or owing from a natural person by reason of a consumer credit transaction. As such, this action arises out of a "consumer debt" and "consumer credit" as those terms are defined by Cal. Civ. Code § 1788.2(f).

FACTUAL ALLEGATIONS

15. At all times relevant, Plaintiff was an individual residing within the State of California.

16. Plaintiff is informed and believes, and thereon alleges, that at all times relevant Defendant conducted business in the State of California.

10 17. Sometime before December 13, 2007, Plaintiff allegedly incurred financial
11 obligations to LVNV FUNDING, LLC that were money, property, or their
12 equivalent, which is due or owing, or alleged to be due or owing, from a
13 natural person to another person and were therefore “debt(s)” as that term is
14 defined by California Civil Code §1788.2(d), and a “consumer debt” as that
15 term is defined by California Civil Code §1788.2(f).

16 18. These financial obligations were primarily for personal, family or household
17 purposes and are therefore “debt(s)” as that term is defined by 15 U.S.C.
18 §1692a(5).

19 19. Sometime thereafter, Plaintiff allegedly fell behind in the payments allegedly
20 owed on the alleged debt.

21 20. Plaintiff maintains that he never incurred a debt directly to LVNV Funding,
22 LLC.

23 21. Plaintiff is informed and believes, and thereon alleges that Defendant engages
24 in a pattern and practice in which it routinely purchases old, defaulted debt in
25 batches, for which it pays pennies (or less) on the dollar. Defendant then files
26 lawsuits against individuals allegedly indebted on an account to a creditor,
27 which Defendant claims to have purchased directly or indirectly from the
28 creditor. Defendant, however, does not obtain from the original creditor, or

from an assignee of the original creditor, admissible evidence demonstrating the amount of the debt allegedly owed by the debtor before filing lawsuits. Defendant also fails to undertake any reasonable investigation into whether a debtor's alleged debt is barred by the Statute of Limitations. Furthermore, Defendant does not obtain admissible evidence of the original agreement or admissible evidence of the chain of ownership of the debts. Plaintiff understands Defendant's practice is to then obtain a default judgment, which is extremely difficult for the debtor to overturn.

22. Defendant's practice enables it to proceed to post-judgment collection regardless of whether it could have proved its case in disputed litigation.
23. On or about December 13, 2007, Defendant, alleging Plaintiff incurred a debt directly with Defendant LVNV Funding, LLC, sought to collect on the alleged debt by filing an action in state court entitled LVNV Funding, LCC v. Dale R. Peterson, Case No.: 37-2007-00083809-CL-CL-CTL.
24. The lawsuit filed by Defendant was a "communication" as that term is defined by 15 U.S.C § 1692a(2), and a "debt collection" as that term is defined by Cal. Civ. Code § 1788.2(b).
25. Plaintiff is informed and believes, and thereon alleges that Plaintiff never incurred a debt directly to Defendant, as Defendant alleged in the state court action.
26. Defendant knew or should have known that the action had no merit and no evidence existed that PETERSON owed this alleged debt. As such, Defendant's actions violated 15 U.S.C. § 1692e(5) in taking action that cannot legally be taken, and 15 U.S.C. § 1692f in constituting an unfair or unconscionable means to collect or attempt to collect the alleged debt. Defendant actions also violated Cal. Civ. Code § 1788.17.

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- 1 27. Defendant knew the alleged evidence it possessed and/or was able to procure
2 during the course of litigation would be insufficient as a matter of law to
3 prove its case at the time of trial. Specifically, Defendant conducted
4 absolutely no investigation into the facts of the underlying state case or as to
5 when the last payment was made by Plaintiff or that no legitimate debt
6 existed.
- 7 28. Defendant's failure to conduct any reasonable inquiry into the facts or merits
8 of the allegations violated 15 U.S.C. §§ 1692d, 1692e, 1692e(10), 1692f, and
9 1692f(1). Because this action violated 15 U.S.C. §§ 1692d, 1692e, 1692e(10),
10 1692f, and 1692f(1), it also violated Cal. Civ. Code § 1788.17.
- 11 29. Despite Defendant's knowledge, it continued to litigate this case, which was
12 subsequently dismissed by Defendant in May, 2008. Even though Defendant
13 dismissed this action, no notice was ever provided to Plaintiff that the action
14 was dismissed. Based on Defendant's failure to provide any notice of the
15 dismissal, Plaintiff was forced to retain counsel to continue to defend this
16 fiviulous state court action. Counsel for Plaintiff was forced to prepare and
17 to appear at a scheduled OSC hearing and find the case dismissed. Based on
18 the dismissal by Defendant, Plaintiff was the prevailing party in the state court
19 action.
- 20 30. Defendant's continued litigation of its meritless claim constituted harassment,
21 oppression, and abuse to Plaintiff in violation of 15 U.S.C § 1692d. Because
22 Defendant's actions violated 15 U.S.C. § 1692d, it also violated Cal. Civ.
23 Code § 1788.17.
- 24 31. Plaintiff was also forced to incur legal expenses in defense of this action. This
25 constituted unfair practices in violation of 15 U.S.C. § 1692f. Specifically,
26 Defendant caused Plaintiff to incur charges in defending its meritless lawsuit
27 in violation of 15 U.S.C. § 1692f(1). Defendant also violated Cal. Civ. Code
28 § 1788.17 as it incorporates 15 U.S.C. §§ 1692f and 1692f(1).

1 **CAUSES OF ACTION CLAIMED BY PLAINTIFF**

2 **COUNT I**

3 **VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT**

4 **15 U.S.C. § 1692 ET SEQ.**

- 5 32. Plaintiff incorporates by reference all of the above paragraphs of this
6 Complaint as though fully stated herein.
7 33. The foregoing acts and omissions constitute numerous and multiple violations
8 of the FDCPA, including but not limited to each and every one of the above-
9 cited provisions of the FDCPA, 15 U.S.C. § 1692 et seq.
10 34. As a result of each and every violation of the FDCPA, Plaintiff is entitled to
11 any actual damages pursuant to 15 U.S.C. § 1692k(a)(1); statutory damages in
12 an amount up to \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and,
13 reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) from
14 each Defendant.

15 **COUNT II**

16 **VIOLATION OF THE ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT**

17 **Cal. Civ. Code §§ 1788-1788.32 (RFDCPA)**

- 18 35. Plaintiff incorporates by reference all of the above paragraphs of this
19 Complaint as though fully stated herein.
20 36. The foregoing acts and omissions constitute numerous and multiple violations
21 of the RFDCPA.
22 37. As a result of each and every violation of the RFDCPA, Plaintiff is entitled to
23 any actual damages pursuant to Cal. Civ. Code § 1788.30(a); statutory
24 damages for a knowing or willful violation in the amount up to \$1,000.00
25 pursuant to Cal. Civ. Code § 1788.30(b); and reasonable attorney's fees and
26 costs pursuant to Cal. Civ. Code § 1788.30(c) from each Defendant.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered against Defendant for:

FAIR DEBT COLLECTION PRACTICES ACT

- an award of actual damages pursuant to 15 U.S.C. § 1692k(a)(1) in an amount to be adduced at trial, from Defendant;
 - an award of statutory damages of \$1,000.00, pursuant to 15 U.S.C. § 1692k(a)(2)(A);
 - an award of costs of litigation and reasonable attorney's fees, pursuant to 15 U.S.C. § 1692k(a)(3).

ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT

- an award of actual damages pursuant to California Civil Code § 1788.30(a) in an amount to be adduced at trial, from Defendant;
 - an award of statutory damages of \$1,000.00, pursuant to Cal. Civ. Code § 1788.30(b);
 - an award of costs of litigation and reasonable attorney's fees, pursuant to Cal. Civ. Code § 1788.30(c).

TRIAL BY JURY

38. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Dated: 6/27/08

Respectfully submitted,
HYDE & SWIGART

By: _____
Joshua B. Swigart, Esq.
Attorney for Plaintiff

**UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION**

**# 152465 - TC
* * C O P Y * *
July 01, 2008
14:09:06**

Civ Fil Non-Pris
USAO #: 08CV1171
Judge.: JANIS L. SAMMARTINO
Amount.: \$350.00 CK
Check#: BC2450

Total-> \$350.00

**FROM: DALE R. PETERSON
VS
LVNV FUNDING**

JS44

(Rev. 07/89)

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS

DALE R. PETERSON

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF (EXCEPT IN U.S. PLAINTIFF CASES) San Diego

DEFENDANTS

LVNV FUNDING, LLC.

08 CV 1171 JLS NLS

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)

San Diego

DEPUTY

BY:

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Joshua B. Swigart (SBN 225557)
411 Camino Del Rio South, Ste. 301
San Diego, CA 92108
Tel: 619-233-7770

ATTORNEYS (IF KNOWN)

Unknown

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- | | |
|--|---|
| <input type="checkbox"/> U.S. Government Plaintiff | <input checked="" type="checkbox"/> 3 Federal Question
(U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III) |

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)
(For Diversity Cases Only)

PT	DEF	PT	DEF
<input type="checkbox"/> 1	<input type="checkbox"/> 1	<input type="checkbox"/> 4	<input type="checkbox"/> 4
<input type="checkbox"/> 2	<input type="checkbox"/> 2	<input type="checkbox"/> 5	<input type="checkbox"/> 5
<input type="checkbox"/> 3	<input type="checkbox"/> 3	<input type="checkbox"/> 6	<input type="checkbox"/> 6

Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country

Incorporated or Principal Place of Business in This State
Incorporated and Principal Place of Business in Another State
Foreign Nation

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

Fair Debt Collection Practices Act, 13 U.S.C. §1692 et seq. and the Rosenthal Fair Debt Collection Practices Act, Cal Civ Code 1788-1788.32 (RFDPA)

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> 422 Appeal 28 USC 133	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 363 Personal Injury - Product Liability	PROPERTY RIGHTS	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instruments	<input type="checkbox"/> 320 Assent, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 430 Copyrights	<input type="checkbox"/> 450 Commerce/ICC Rates/etc.
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 430 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 440 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damages	SOCIAL SECURITY	<input type="checkbox"/> 480 Selective Service
<input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits	<input type="checkbox"/> 350 Motor Vehicles	<input type="checkbox"/> 385 Property Damage - Product Liability	<input type="checkbox"/> 481 HIA (1995)	<input type="checkbox"/> 500 Securities/Commodities Exchange
<input type="checkbox"/> 160 Stockholders Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 482 Black Lung (923)	<input type="checkbox"/> 675 Customer Challenge 12 USC
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 483 DWCA/DWV (405(g))	<input type="checkbox"/> 691 Agricultural Acts
<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> CIVIL RIGHTS	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 484 SSID Title XVI	<input type="checkbox"/> 692 Economic Stabilization Act
REAL PROPERTY		<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 485 RSI (405(a))	<input type="checkbox"/> 693 Environmental Matters
<input type="checkbox"/> 210 Land Condemnation		<input type="checkbox"/> 445 Other Civil Rights	<input type="checkbox"/> 487 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 694 Energy Allocation Act
<input type="checkbox"/> 220 Foreclosures		<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus	<input type="checkbox"/> 487 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 695 Freedom of Information Act
<input type="checkbox"/> 230 Rent Leases & Ejectment		<input type="checkbox"/> 530 General		<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 240 Tort to Land		<input type="checkbox"/> 535 Death Penalty		<input type="checkbox"/> 950 Constitutionality of State
<input type="checkbox"/> 245 Tort Product Liability		<input type="checkbox"/> 540 Mandamus & Other		<input type="checkbox"/> 950 Other Statutory Actions
<input type="checkbox"/> 250 All Other Real Property		<input type="checkbox"/> 550 Civil Rights		
		<input type="checkbox"/> 555 Prisoner Conditions		

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- 1 Original Proceeding 2 Removal from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
UNDER Fr.C.P. 23

DEMAND \$ 76000

Check YES only if demanded in complaint:

JURY DEMAND: YES NO

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE

DATE 06/27/2008

Docket Number

SIGNATURE OF ATTORNEY OF RECORD

F 152465 TAC \$350 7/1/08
ODMA/PCDOCS/WORDPERFECT/228161 January 24, 2000 (3:10pm)

ORIGINAL